

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DARON SCOTT, and
DUREYA SCOTT,

Plaintiffs,

v.

No. CIV-09-797 JB/GBW

COUNTY OF DONA ANA, et al.,

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO AMEND

This matter is before the Court on Plaintiffs' most recent motion for leave to file an amended complaint. *Doc. 97.* Despite the Court's admonishment in its last order that Plaintiff comply with Local Rule 7.1 in future motion practice, Mr. Rodriguez again failed to seek the consent of opposing counsel before filing his motion. Nevertheless, Defendants filed a response noting their non-opposition (*doc. 97*), and for the sake of moving this case along, I decline to deny the motion for failure to comply with the Local Rule.

In my June 2, 2010 order denying one of Plaintiffs' earlier motions for leave to amend, I outlined the history of Plaintiffs' attempts at amendment and the reasons I was inclined to grant an amendment if Plaintiffs would produce a complaint that was intelligible and complied with the Civil Rules. *Doc. 88.* They have produced an

acceptable complaint now, so I will grant the motion for leave to amend for substantially the same reasons as those stated in my order at docket entry 88.

Plaintiffs contemporaneously filed a motion to dismiss (most of) the parties named in their original complaint who make no appearance in the complaint attached to their most recent motion to amend. *Doc. 98.* Again, counsel for Plaintiffs failed to seek Defendants' consent, but Defendants filed a response indicating their non-opposition. *Doc. 100.* When a petitioner files an amended complaint the new complaint supersedes all previous complaints and controls the case from that point forward. *See Fullerton v. Maynard*, 943 F.2d 57, *2 (10th Cir. 1991) (citing *Boelens v. Redman Homes, Inc.*, 759 F.2d 504, 508 (5th Cir. 1985)). Thus, Plaintiff's motion to dismiss (*doc. 98*) is hereby denied as moot because, by virtue of the new complaint, the following parties will automatically be terminated: Allen Davis, Dona Ana County Commissioners, Dona Ana Humane Society, Chuck Franco, Todd Garrison, Joseph Guillory, Gary King, Deanise Marta, Susana Martinez, Olivia Nevarez-Garcia, Amy Orlando, Geraldo Perez, Gloria Ramos, Susan Riedel, Richard Silva, Michelle Ugalde, Russell Ward, Dona Ana County Sheriff's Department, FNU Herdia, and Joe Jacques.¹

¹Plaintiffs' motion to dismiss does not include FNU Herdia or Joe Jacques. Nevertheless, neither Mr. Herdia nor Mr. Jacques are named as defendants in Plaintiffs' new complaint. Also, the motion to dismiss includes two parties that were not named in the original complaint and therefore have never been parties to this suit: Dona Ana County Code Enforcement Department and Las Cruces Code Enforcement Department. *See doc. 98.*

Plaintiffs also filed a motion to dismiss after an earlier attempt to file an amended complaint. *Doc. 91*. The earlier motion to dismiss sought to dismiss parties no longer included in the corresponding amended complaint. *See Doc. 90*. Because the related motion for leave to amend was denied (*doc. 96*), that motion is also denied as moot.

Finally, on February 22, 2010, the Court granted Plaintiffs' motion to stay resolution of pending dispositive motions (*doc. 51*) until Plaintiffs' motion to amend the complaint was decided. *Doc. 70*. That stay is now lifted, and any pending dispositive motions not mooted by the amended complaint will be assigned a new response deadline in a forthcoming order.

Thus, IT IS HEREBY ORDERED that Plaintiffs' Motion for Leave to Amend (*doc. 97*) is GRANTED, Plaintiffs' Motions to Dismiss (*docs. 90, 98*) are DENIED as moot, and the stay imposed in the Court's Order at docket entry 70 is lifted.



UNITED STATES MAGISTRATE JUDGE